IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23108 of 2018

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Arun Kumar Singh S/o Late Ram Krishna Singh Resident of village- Khaprail Chak, P.O.and P.S.-Parsa Bazar,District-Patna, Pin-804453

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary-cum- Inspector General of Registration ,BIhar,Patna.
4. The Collector-cum-District Registrar,patna.
5. The District Sub Registrar, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Bal Bhushan Choudhary, Adv
For the Respondent/s : Mr. Anil Kr.Sinha -Ga1

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL ORDER

5 08-08-2025 Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondent-State.

2. Learned counsel for the petitioner submits that Usha Devi, wife of Late Sudhir Kumar Singh, resident of village- Ramadeochak, P.S.-Karauna, District- Jehanabad at present residing at RC/3 B.H. Colony, Patna 26, is owner of raiyati cultivable land 0.43 acre of Plot No. 1249 appertaining to Khata–192, Thana no. 92 of village-Simara and was paying rent to the State of Bihar and the State granted rent receipt in favour of her husband upto year 2016-17. It is further contended that Circle Officer, Phulwarisharif also granted Land Possession Certificate (LPC) in favour of the husband of Usha Devi.

Subsequently after the death of her husband, Usha Devi agreed to sale 0.43 acre of land to the petitioner for total consideration amount of Rs.42,14,000/-. The petitioner is said to have presented the sale deed before Sub Registration Office, Phulwarisharif on 04.04.2018 for registration. The value as well as nature of the land had been correctly mentioned in the sale deed upon which stamp duty of Rs. 2,65,482/- was also paid. The vendor presented document of sale and admitted execution before the Registering Authority and accordingly, the sale deed was duly registered on 04.04.2018 bearing deed no. 3708/2018. After the sale deed has been registered on 04.04.2018, on 09.04.2018, the Sub-Registrar, Phulwarisharif, Patna referred the matter under Section 47A(1) of the Indian Stamp Act, 1899 for determination of the classification of the property and fixation of deficit stamp duty. On the basis of the said reference, Assistant Inspector General of Registration registered it as Case No. 64 of 2018. Thereafter on 17.04.2018, the Assistant Inspector General, Registration, Patna Division by letter no. 493 dated 17.04.2018 sent a notice to the petitioner fixing the date 27.04.2018 for filing objection. Learned counsel for the petitioner further submits that the petitioner appeared before the Assistant Inspector General, Registration, Patna Division and on

28.05.2018 and 02.08.2018, the petitioner filed his written statement with supporting documents in support of the correctness of valuation mentioned in the sale deed. Finally on 13.08.2018, without considering the oral and documentary evidence, the Assistant Inspector General of Registration, Patna Division (respondent no. 3) passed an order which was communicated to the petitioner on 27.08.2018. Being aggrieved with this order, the petitioner has filed the present writ application.

3. Per contra, learned counsel appearing for the State has defended the order dated 13.08.2018 passed by the Assistant Inspector General of Registration, Patna Division contending that the same has been passed after hearing the petitioner and it is in accordance with law.

4. On 15.05.2025**,** learned counsel appearing for the respondent-State made a categoric statement that the sale deed which was presented by the petitioner on 04.04.2018 was not registered on the said date. This statement was made by learned counsel appearing for the respondent-State despite the fact that in the counter affidavit filed by the respondent-State, State had not denied to the specific averment made by the petitioner in paragraph 6 of the writ application wherein the petitioner had categorically stated that sale deed was presented on 04.04.2018 and the same stood registered on the same date bearing deed no. 3708 of 2018.

5. It is for this reason that on 15.05.2025, this Court had directed the respondent-State to file a supplementary counter affidavit stating on affidavit that the sale deed in question was not registered on 04.04.2018 and that the receipt granted to the petitioner vide Annexure-3 was not a proof of execution and registration of the sale deed. It was also made clear that the supplementary counter affidavit must be personally sworn by the Sub-Registrar, Phulwarisharif, Patna.

6. In compliance of the aforesaid direction given by this Court on 15.05.2025, a counter affidavit has been filed by Sub-Registrar, Phulwarisharif, Patna (respondent no. 5) wherein in paragraph 6 of the said counter affidavit, the Sub-Registrar, Phulwarisharif has made a categoric statement that the document i.e. the sale deed was registered on 04.04.2018 and in proof the same, a copy of the registered sale deed has also been brought on record by way of Annexure-R/1. In paragraph 7 of the said counter affidavit, it has been further stated by the Sub-Registrar, Phulwarisharif that the learned counsel appearing for the respondent-State had made a wrong submission earlier that the sale deed which was presented by the petitioner on 04.04.2018 was not registered on the said date. The Sub-Registrar, Phulwarisharif, therefore, regrets the same and tenders unconditional and unqualified apology for making a wrong statement. Paragraphs 6 and 7 of the counter affidavit filed by respondent no. 5 i.e. the Sub-Registrar, Phulwarisharif is reproduced hereinbelow for needful.

> *"6. That it is humbly submitted that the respondents in their counter affidavit has nowhere stated that the sale deed bearing no.-3708 of 2018, which was presented by the petitioner on 04.04.2018 was not registered on the said date. The document has been registered on the said date.*
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> *7. That it appears that the counsel appearing on behalf of the respondent State has inadvertently made submission before the Hon'ble Court that the sale deed which was presented by the petitioner on 04.04.2018 was not registered on the said date. The answering respondents deeply regret for this and tender their unconditional and unqualified apology for any act of omission or commission which may have taken place inadvertently."*

7. Further in paragraph 10 of the counter affidavit filed by respondent no. 5, it has been admitted that reference was made under Section 47A(1) of the Indian Stamp Act on 09.04.2018 and on the basis of the said reference, a case was registered as Case No. 64 of 2018 in which final order was passed on 13.08.2018 (Annexure-10) whereby the petitioner has been directed to deposit deficit stamp duty of Rs. 3,34,678/- and penalty amount of Rs. 38,468/-, totalling to Rs. 4,23,416/-. Relevant paragraph nos. 10-13 to the counter affidavit filed by respondent no. 5 is also reproduced hereinbelow:-

> *"10. That in view of the aforesaid facts, the Sub-Registrar, Phulwarisharif on 09.04.2018, referred the matter on the prescribe format under section-47A of the Act read with Rule-9(2) and 10(2) of the Rules to the Assistant Inspector General, Registration, Patna Division, Patna for taking proper action in respect of realization of deficit Stamp Duty amounting to Rs. 3,84,678.00.*
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> *11. That Assistant Inspector General of Registration, Patna Division, Patna on the basis of the said reference registered Case no.-64 of 2018 and issued notice to the petitioner vide letter no.-493, dated-17.04.2018 and letter no.-384, dated-03.05.2018 (Annexure-5 and 7 of the writ petition) and sought written statement along*

with documents in the aforesaid matter.

12. That the Assistant Inspector General of Registration, Patna Division, Patna after considering all the facts on record passed order dated-13.08.2018 (Annexure-10 of the writ petition) whereby the petitioner has been directed to deposit deficit Stamp Duty of Rs. 3,34,678.00+ the penalty amount of Rs. 38,468.00 totaling to be Rs. 4,23,416.00 through challan in S.B.I., Phuswarishrif branch, Patna within the period of 60 days failing which interest @ 5% per month on the deficit stamp duty shall be realised.

13. That in view of the aforesaid facts, it is apparent that the order passed for initiation of reference case by the Sub-Registrar, Phulwarisharif under section-47A(1) of the Indian Stamp Act and the order dated-13.08.2018 passed by the Assistant Inspector General, Patna Division in Case no.-64 of 2018 is tenable in the eyes of law."

8. From the aforesaid statement made by respondent no. 5 i.e. the Sub-Registrar, Phulwarisharif, it is now absolutely clear that the sale deed stood registered on 04.04.2018 and the reference under Section 47A(1) of the Indian Stamp Act for calculating the deficit stamp duty was referred on 09.04.2018.

9. The limited controversy, therefore, which arises for consideration in this case is that when the sale deed had stood registered on 04.04.2018 then whether the Sub-Registrar, Phulwarisharif, Patna could have referred the matter under Section 47A(1) of the Indian Stamp Act on 09.04.2018 for calculation of deficit stamp duty by the Assistant Inspector General, Registration, Patna?

10. The aforesaid issue which has arisen for consideration in the present case is no longer *res-integra* as the same has been elaborately considered and decided by this Court in the case of ***Ahmar Rahman vs the Assistant Inspector General, Registration, Patna Division and Anr*** vide judgment dated 23.07.2025 passed in CWJC No. 324 of 2018 wherein it has been held and observed as follows:

> *10. The legal proposition as to whether a reference can be made under Section 47A(1) of the Indian Stamp Act after the sale deed has been registered is no longer res integra. In the case of* ***Mohammad Asim Rahman vs. The State of Bihar & Ors****. this Court vide judgment dated 23.02.2023 has held and observed as follows:*
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> *"5. I have heard the learned counsel for the parties and gone through the*

materials on record. At the outset, it would be relevant to reproduce Section 47A (1) of the Indian Stamp Act, 1899 [as amended by the Indian Stamp (Bihar Amendment) Act, 2013, published in the gazette on 03.05.2013], herein below:-

"(1) Where the registering officers appointed under the Registration Act, 1908 while registering any instrument of conveyance, exchange, gift, partition or settlement is satisfied that the classification of the property and/or the measurement of the structure contained in the property which is subject matter of such instrument has been set forth wrongly or the market value of the property, which is subject matter of such instrument has been set forth at a lower rate than the Guideline Register of Estimated Minimum Value prepared under the rules framed under the provision of this Act, he shall refer such instrument before registering it to the Collector for determination of the proper market value of such property and the proper duty payable thereon."

6. It is apparent from a bare perusal of Section 47A(1) of the Indian Stamp Act, 1899 that the registering authority can only refer the matter, before registering the document in question, to the Collector / the Assistant Inspector General, *for determination of the proper market value of such property and the duty payable thereon. As far as the present case is concerned, it is an admitted fact that the sale deed in question was registered on 7.9.2017, in the office of the Sub-Registrar, Phulwarisharif, Patna, however, the same was referred by the Sub-Registrar, Phulwarisharif, to the respondent No. 2 under Section 47A(1) of the Indian Stamp Act, 1899 only on 31.7.2018 i.e. after lapse of about 10 months of registration of the sale deed in question, which in any view of the matter is illegal & contrary to the provisions contained in the Act, 1899.*

7. This Court further finds that if at all any proceeding is required to be initiated after registration, the same can be done by the Collector / Assistant Inspector General Registration, who can suo motu, within two years from the date of such registration, under Section 47A(3) of the Indian Stamp Act, 1899, call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of such instrument and the duty payable thereon, however, this is not the case here, inasmuch as in the present case, the Sub-Registrar, Phulwarisharif, Patna, *has made a reference to the Assistant Inspector General, Registration, Patna Division, Patna, vide letter dated 31.07.2018, after the registration of the sale deed on 7.9.2017, thus there is a clear contravention of Section 47A(1) of the Indian Stamp Act, 1899. This Court is of the view that the present case is squarely covered by the law laid down by a coordinate Bench of this Court in the case of Shahnaz Begam (supra), which the Ld. State counsel has not been able to controvert. It would be apt to reproduce paragraphs no. 6 to 9 of the said judgment rendered in the case of Shahnaz Begam (supra) herein below:-*

"6. It, thus, follows that the Registering Authority can only refer the matter before registering it to the Collector for determination of the proper market value of such property and the proper duty payable thereon. In the present case, it is quite clear that the registration was already effected and it was only thereafter that the reference was made to the Collector/AIG Registration for determination of the correct value. Furthermore, if at all, a proceeding was to have been initiated after registration by the Collector suo motu within the provisions of Section 47A(3), the same could have been

done within a period of two (2) years from the date of registration of such instrument already referred to him under Sub Section (1). Provisions as stated in Section 47A(3) is as follows:-

"The Collector may suo motu within two years from the date of registration of such instrument not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of such instrument and the duty payable thereon and if, after such examination, he has reason to believe that the market value of such property, has not been rightly set forth in the instrument , [or is less than even the minimum value determined in accordance with any rules made under this Act] he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

Provided that nothing in this sub-section shall apply to any instrument registered before the date of commencement of the Indian Stamp (Bihar Amendment

Ordinance 1986).”

7. It appears from the counter affidavit filed that it is not a proceeding initiated rather it was a reference to the Collector under Section 47A (1).

8. In that view of the matter, since the provisions clearly state that such enquiry can be made only before registering it to the Collector for determination of the proper market value of such property and the proper duty payable thereon. The entire reference is made against the statutory provisions and cannot be sustained in the eye of law. Thus, in the considered opinion of the Court, the impugned order dated 16.05.2016 as contained in Annexure-4 is wholly illegal and arbitrary and has to be quashed.”

11. For the reasons as stated above, this Court finds that the reference made by the Sub-Registrar, Phulwarisharif under Section 47A(1) of the Indian Stamp Act on 09.04.2018 to the Assistant Inspector General, Registration, Patna for determination of proper market value of the property in question and the duty payable thereon after the property stood registered and sale deed stood executed on 04.04.2018 is completely illegal and without jurisdiction and hence the impugned order dated 13.08.2018 passed by the Assistant Inspector General, Registration, Patna in Case No. 64 of 2018 (Annexure-10) is hereby quashed/set aside. Consequently, the respondent no. 5 i.e. the Sub-Registrar, Phulwarisharif is directed to release the registered sale deed no. 3708 of 2018 to the petitioner within fifteen days from the date of passing of this order.

12. The writ application stands allowed. All pending interlocutory application(s), if any, shall also be deemed to have been disposed of.

(Alok Kumar Sinha, J)

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